

Zoning Board of Appeals

Minutes

June 20, 2006

Members Present

Barry Silverstein-Chairman
Ronald Critelli
Lynne Raver
MaryAnn Leenig
Marc Breimer-Alternate

Members Absent

April Callahan-Alternate
Maureen Kangas-Vice Chairman

Other Officials Present

Janis Gomez Anderson, Esq. – ZBA Attorney
Edward Peters – Deputy Building Inspector, Interim Zoning Administrator
Donald Cocker – Code Enforcement Officer

Notice of Appeal Hearing has been published in the Poughkeepsie Journal, The Southern Dutchess News and The Beacon Free Press.

Notified of the variance requests were the Town Board, Town Planning Board, Dutchess County Department of Planning, The Interim Zoning Administrator and the surrounding property owners.

The meeting of the Zoning Board of Appeals was called to order at 7:03 pm by the Chairman. He made announcements regarding the no smoking policy and the emergency exits and fire procedures. The Chairman read the procedures for the process of the Zoning Board of Appeals meetings.

Chairman Silverstein announced that Alternate Member, Marc Breimer was on the Board for this meeting with full voting rights.

Chairman Silverstein called for comments or corrections to the minutes of the May meeting. Hearing none, he called for a motion to accept the minutes as written.

Ronald Critelli made the motion to accept the minutes as written from the May 16, 2006 meeting.

MaryAnn Leenig seconded.

Motion Carried

Barry Silverstein – Aye

Ronald Critelli – Aye

Lynne Raver – Aye

MaryAnn Leenig – Aye

Marc Breimer – Aye

Votes:

ZB06-006, Wasylchak

Marc Breimer made the motion to reopen this Public Hearing

MaryAnn Leenig seconded

Motion Carried

Barry Silverstein – Aye

Ronald Critelli – Aye

Lynne Raver – Aye

MaryAnn Leenig – Aye

Marc Breimer – Aye

Janis Anderson commented that the Hearing should be scheduled for the next meeting. She reminded the Board that the Hearing was being reopened to consider one aspect of the variance application (lot coverage) that had not been addressed at the last meeting. The applicants will also need to apply for an additional variance.

Chairman Silverstein asked Mr. Wasylchak if he was already aware of this. Mr. Wasylchak advised that he received the message from his wife, but that she is ill and didn't know how to explain what was needed.

Chairman Silverstein asked Mr. Wasylchak to approach the Board and Ms. Anderson would explain it to him.

Ms. Anderson explained that he correctly requested the lot coverage variance on the application but the Board did not discuss it during their Public Hearing. It needs to be discussed. She explained that in regards to undersized lots, when a variance is requested for other than setbacks, such as the lot coverage, and additional variance is required for their lot size.

Ms. Anderson advised that the Applicant will need to submit a letter to the Board requesting that variance. She also advised that the Board will need to receive a copy of the deeds showing that at the time the zoning law passed, the lot was of single and separate ownership. It needs to be shown that the lot wasn't combined with another and then subdivided again. Ms. Anderson stated that most of the deeds can be found in the Assessor's file here at Town Hall, but they don't go back far enough. The earlier deeds can be found at the County Clerk's Office. She gave Mr. Wasylchak her work phone number and advised him to contact her for more details.

Chairman Silverstein stated that there is a possibility that at the July meeting, if everything meets the criteria and all of the questions are answered, that they will be able to vote on it that night.

Old Business

Continued Public Hearing for:

Grid Number: 6156-03-165377 Address: 299 Baxtertown Rd
Application Number ZB06-005, submitted by John and Susan Attebery, requesting a 15ft variance to construct an addition, creating a 10ft side yard setback where 25ft is the minimum in an R-40 Zoning District. Said request is a violation of Chapter 150-33.A. of the Code of the Town of Fishkill.

Chairman Silverstein called upon Janis Anderson to discuss the issues presented at the May meeting. Ms. Anderson commented that the Planning Board raised a concern regarding the lot coverage and if Town Code 150-14 (f) applied. She advised that the Applicant's have determined their total lot coverage to be under the 12% maximum. Town Code Section 150-14 (f) is regarding non-conforming uses. This is an addition to a residential house in a residential zone and therefore the section does not apply. Ms. Anderson stated that Mr. Critelli also questioned whether an additional side yard setback variance was required on other side of the house where the Applicant's believed that a previous variance granted for that side eliminated the need for an additional variance. The interpretation that the Board has taken in the past is that a variance granted is for a single project and will need to be requested again for a new application. She stated that the Applicant may have an amendment for this variance.

Ms. Anderson used this property to cite an example of when a lot size variance is not required. She advised the Board that although this property is an undersized lot, they are only asking for setback variances. They do not need to get a variance for their lot side they way the other applicants need to.

Chairman Silverstein requested the Applicant's approach the Board. Mrs. Attebery presented the Board with a letter requesting the amendment to their application requesting the additional variance for a 14ft side yard setback. The Chairman read the letter into the record and presented it to Nancy Lecker to keep in the ZBA file.

The Chairman asked the Applicant's if they had anything further to add to the record. They declined. He then called for questions from the Board. Hearing none, he called for a motion to close this Public Hearing.

Lynne Raver made the motion to Close the Public Hearing

Marc Breimer seconded

Motion Carried

Barry Silverstein – Aye

Ronald Critelli – Aye

Lynne Raver – Aye

MaryAnn Leenig – Aye

Marc Breimer – Aye

Vote:

ZB06-005, Attebery, Baxtertown Rd

Lynne Raver made the motion to Grant the amended variance request

Marc Breimer seconded

Motion Carried

Barry Silverstein – Aye

Ronald Critelli – Aye

Lynne Raver – Aye

MaryAnn Leenig – Aye

Marc Breimer – Aye

New Business

Appeal Number 1

Grid Number: 5956-04-845282 Address: 265 Old Castle Point Rd

Application Number ZB06-007, submitted by Robert and Kimberly Stanley, requesting a 12% lot coverage variance to legalize the existing 29% lot coverage and increase to 32% lot coverage where 20% is the maximum allowed in an R-20 Zoning District to install an inground pool.

Communications:

DC Department of Planning cited this as a matter of local concern

Town of Fishkill Planning Board gave an adverse recommendation citing the lot coverage exceeds the intent of the Zoning District and also drainage and storm water management as their main concerns.

Robert Seymour, Old Castle Point Rd, no objection

Frank & Lou Ann Smith, Old Castle Point Rd, no objection

Robert and Kimberly Stanley presented to the Board. Mrs. Stanley advised that they would like to have an inground pool installed in their back yard for their grandchildren. She advised that they have a restriction in their neighborhood requiring all pools to be inground. She would have preferred an above ground pool. MaryAnn Leenig and Ronald Critelli questioned why they were restricted. Mr. Critelli asked if there was a homeowners association in their area. Mrs. Stanley stated that when they purchased the property they were required to sign a document which indicated rules regarding the property. Mr. Stanley cited an example that one of the rules regarding fencing was that only the rear of the property could have a fence. They are not allowed to fence the front of their property. Other rules include no clothes lines, campers or trailers.

Chairman Silverstein asked if they still had a formal homeowners association. Mrs. Stanley advised that they have lived there for over two years and have not heard anything to the contrary. Mr. Stanley commented that another neighbor recently installed a pool and was also required to have an inground.

Chairman Silverstein questioned the design of the driveway. He asked if they would be willing to remove some of it to reduce the lot coverage. Mr. Stanley advised that the driveway was designed that way due to limited sight exiting the driveway. The location of the garage necessitates the paved area in front of the garage to maneuver in and out of it. Castle Point has fenced off their property and the maximum amount of driveway that could be removed would only be 400 to 500 square feet. The Chairman agreed that exiting their property is difficult and agreed with the design of the driveway.

The Chairman called for questions from the Board.

Lynne Raver asked if they could install a pool smaller than the 15' x 34' listed. She also questioned the stone around the pool. Mr. Stanley stated that they were installing paver brick around the pool. Mrs. Stanley commented that they were advised that it was a pervious stone. The water will seep in.

Janis Anderson questioned the shaded area around the pool. Mr. Stanley advised that the code requires a 4 foot concrete area around the pool. The other shaded area is the paver stone.

Ms. Anderson asked Ed Peters if a variance would be required if the pool is 13ft from the property line, but there is a 4ft concrete piece surrounding it. Mr. Peters responded that it only had to be 10ft from the property line. Mr. Critelli restated the question asking if the setback is from the edge of the pool or the edge of the concrete. Mr. Peters stated that it is from the edge of the pool.

Mr. Stanley advised the Board that the rear of their property is all grass. It goes back approximately 300ft. There is no problem with run off. He also owns the lot next to him and it is undeveloped. His property does not abut against another neighbor or house.

Ronald Critelli asked how the dimensions of the pool we calculated. Mr. Stanley advised that it is a drop-in pool made from fiberglass. Mr. Critelli asked what the next smaller size down was. Mr. Stanley advised that he did not know.

Mr. Stanley commented that the entire pool is not 15' x 34'. The pool waves in and out and its widest point is 15ft. He stated that the literature for the pool was given (for the building permit).

Mr. Critelli asked for verification that the maximum width was 15ft. He asked if they have seen a picture of the pool. Mrs. Stanley confirmed that it was and they did have a picture of it. Mr. Critelli asked Mr. Peters if he saw a picture of the pool. Mr. Peters stated that he couldn't recall the size of the pool. He advised that he thought it was a rectangular pool. Mr. Stanley reiterated the design of the pool and stated that it curves in and has seats around it. Chairman Silverstein and Lynne Raver compared it to a big Jacuzzi or hot tub. Mr. Stanley agreed with the comparison. Mr. Peters stated that the measurements are taken from the widest points.

Janis Anderson asked if they needed a lot size variance. She commented that a building permit variance for an undersized lot which requests variances for other than setbacks requires the lot size variance. Proof needs to be established that the lot was in existence when the zoning laws went into affect. Mr. Stanley stated that this is a new subdivision. It was only created a few years ago. It is behind Castle Point Hospital and is part of the Riverwalk subdivision. Ms. Anderson asked if it was an undersized lot. Mr. Stanley stated that it was not. He advised that all of the lots are 200' x 100'. Ms. Anderson stated that she misunderstood and thought that when asked, Nancy Lecker stated that this was one of the undersized lots.

Nancy Lecker commented that part of this lot was also in the Town of Wappinger. Ms. Anderson asked if the Applicant needed to meet the Zoning requirements of Wappinger as well. Mr. Stanley stated that the Wappinger portion is approximately 12ft wide, running along the side of the house. Chairman Silverstein asked for verification that the piece was included in their total lot size. Mr. Stanley confirmed that it was.

Janis Anderson asked for verification of the other lot that the Applicant's own. Mr. Stanley pointed to the GIS photo and indicated the lot next to his that he owns. Ms. Anderson asked Ed Peters if he was familiar with the requirements when a parcel falls within two jurisdictions. Mr. Peters advised that he did not but commented that the building permit was applied for in Fishkill and must comply with our regulations. It is his belief that Fishkill would govern. Mr. Stanley stated that he first went to Wappingers and was referred to the Town of Fishkill.

Lynne Raver questioned if there was a problem with the second lot that they own. Mrs. Stanley stated that the lot is fine and they purchased it with the thought that their son may want it in the future. He was engaged at one point and they want to keep it for him. Ms. Raver asked if it was possible to put the pool on this lot. Mrs. Stanley advised that they can not just have a pool on the lot. It must have a house on it first.

Chairman Silverstein stated that he had no more questions and called for any additional questions from the Board. Members commented that they were satisfied.

The Chairman called for a motion to Close this Public Hearing
Lynne Raver made the motion to Close the Public Hearing
MaryAnn Leenig seconded
Motion Carried

Barry Silverstein – Aye
Ronald Critelli – Aye
Lynne Raver – Aye
MaryAnn Leenig – Aye
Marc Breimer – Aye

Deliberations

ZB06-009, Stanley

Ed Peters commented that the blocks being put around the pool have joints that let the water pass through and go into the ground. He considers that as pervious. With Concrete blocks, the water will run off, but these are small and the water runs right through them.

Chairman Silverstein questioned whether the measurement should be from the property line to the edge of the water line, or to whatever permanent structure is put around the pool.

Ronald Critelli commented that he would have preferred to have seen a picture of the pool since it was filed as a rectangle. Janis Anderson commented that the Applicants advised that they submitted a picture of the pool. Mr. Critelli voiced a concern that a portion of the pool may be larger than 15ft. Chairman Silverstein advised that the Applicant is willing to submit another picture and asked if Mr. Critelli wanted it for the vote. Mr. Critelli declined.

MaryAnn Leenig asked if the concrete area around the pool was also part of the variance. Chairman Silverstein advised that according to Mr. Peters, the measurement is from the property line to the water line of the pool and the concrete and additional items around it are not included. Ms. Leenig stated that she did not understand. Mr. Peters advised that the code states “structure”. The structure is the pool, the sidewalk is not. Ms. Leenig asked how the ZBA is able to give them permission to put the sidewalk there. Chairman Silverstein advised that Mr. Peters’ commented that it is not part of the variance. They can do it without it. Mr. Peters advised that a sidewalk can be placed anywhere on the property. Ms. Leenig asked for verification that it would not become a setback issue. Mr. Peters confirmed that it would not. Ms. Leenig asked for verification that it also included the fencing that surrounds the pool. Donald Cocker confirmed that fencing also has no setback requirements.

MaryAnn Leenig asked if there have been other variances regarding inground pools. Chairman Silverstein stated that there have been. He noted that an inground pool is more esthetically pleasing and previous Board Members felt that the addition of an inground pool does not change the characteristics of the neighborhood. Some Board Members had a different view of above ground pools. They are visible from the road and are high off the ground.

Janis Anderson asked if the Planning Board had any additional comments. Chairman Silverstein stated that they did not ask any questions. Lynne Raver stated that they made a comment regarding drainage. Ms. Anderson agreed and commented that the Applicant spoke about the drainage going into the field behind them. The Chairman re-read the letter to the Members and stated that the comment made regarding drainage and storm water management is a generic comment and not specific to this appeal.

Additional Business

Ronald Critelli stated that there may be a need for an amendment to the zoning law. Chairman Silverstein stated that if the ZBA feels that something should be counted, it could be a recommendation or it can be done case-by-case. Mr. Peters advised that if the ZBA wants it counted it can be. Mr. Critelli referenced the appeal regarding the pet cemetery. The code did not specify “pet cemeteries” so the ZBA filled that “hole”. There won’t be that many pet cemeteries, but there will be many pools and this should be clarified. Chairman Silverstein commented that it could be noted that pools count towards lot coverage, but the concrete walkway may or may not.

Chairman Silverstein commented that the building permits may need to request additional information. It should not be the job of the ZBA to calculate information. Janis Anderson commented that it is the purview of the ZBA to request specific information. She cited appeals where the ZBA requested the actual building plans. Ms. Anderson noted that a recent application did not show where an addition was being placed. She commented that the ZBA application is being revised to include more detailed information.

Ed Peters commented that lot coverage is not currently part of the requested information for a building permit. The form should be revised.

Chairman Silverstein stated that he is also not comfortable with submissions of hand drawn diagrams, but at the same time does not want to put a burden on an applicant to use an engineer or architect. Mr. Peters responded that if an applicant submits something hand drawn, that it will be his responsibility to ensure that it is accurate.

Chairman Silverstein advised that the ZBA has had appeals regarding the legalization of structures because an applicant made a mistake in his drawing.

Chairman Silverstein called for any additional business. Hearing none, he called for a motion to Adjourn the ZBA Meeting.

Lynne Raver made the motion to Adjourn the ZBA Meeting

MaryAnn Leenig seconded

Motion Carried

Meeting Adjourned at 7:52pm

Respectfully submitted
Nancy Fitzgerald-Lecker
ZBA Clerk